

David R. Boyajian, OSB #112582
Email: dboyajian@schwabe.com
SCHWABE, WILLIAMSON & WYATT, P.C.
1211 SW 5th Ave., Suite 1900
Portland, OR 97204
Telephone: 503.222.9981
Facsimile: 503.796.2900

Briton P. Sparkman, Admitted PHV
Email: bsparkman@chaloslaw.com
CHALOS & CO, P.C.
55 Hamilton Avenue
Oyster Bay, NY 11771

Attorneys for Plaintiff, Pacific Gulf Shipping Co.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

PACIFIC GULF SHIPPING CO.,

Plaintiff,

vs.

**ADAMASTOS SHIPPING & TRADING
S.A., VIGOROUS SHIPPING &
TRADING S.A., BLUE WALL
SHIPPING LTD., and PHOENIX
SHIPPING & TRADING S.A.**

Defendants.

No. 3:18-CV-02076-MO

Admiralty

**DECLARATION OF EDWARD MILLS-
WEBB**

I, Edward Mills-Webb, declare as follows:

1. I am over the age of 21 years and am fully capable and competent of making this declaration. I have personal knowledge of the facts below and declare that the following facts

are true and correct under penalty of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746.

2. I am a partner at Clyde & Co LLP, solicitors appointed on behalf of Pacific Gulf Shipping Company ("PGS"). I qualified as a solicitor in England and Wales in 2003. I regularly represent clients in cases involving the international sale and movement of goods, finance, insurance and regulatory issues, and maritime and admiralty cases (with particular knowledge of commodity, charterparty and bill of lading disputes). I have significant experience in the UK High Court proceedings and arbitration work before the London Maritime Arbitrators Association ("LMAA").

3. I am authorized to make this declaration on behalf of Clyde & Co LLP and Plaintiff PGS.

4. I was instructed on behalf of PGS in connection with the abandonment of the m/v ADAMASTOS ("Vessel") in Brazil.

5. Originally, it was believed that Adamastos Shipping & Trading SA ("Adamastos Shipping") had appointed English Law solicitors in connection with the m/v ADAMASTOS, because the firm of Swinnerton Moore, came on the record in London as 'acting on behalf of Owners', but it was not identified who the 'owners' were.

6. Following the abandonment of the Vessel in Brazil, PGS commenced arbitration proceedings through the LMAA in London, consistent with the dispute resolution clause in the charter party agreement.

7. The appointed solicitors, Swinnerton Moore, claimed not to be instructed on-behalf of the Owner of the Vessel and were now only instructed on-behalf of Phoenix Shipping & Trading S.A. ("Phoenix"). The Owner failed, neglected, and/or refused to further engage in

the arbitration proceedings.

8. Ultimately, it was learned that the m/v ADAMASTOS was sold with the cargo on-board. Full details of the price achieved or to whom the Vessel was sold were not available to PGS or to me.

9. In the applicable charterparty agreement (DE 1, Exhibit 1), the Owner of the m/v ADAMASTOS was identified as Phoenix and not Adamastos Shipping.

10. PGS' brokers had also identified Phoenix as Owners of the Vessel, as there had been no disclosure that Phoenix was acting as an agent and not on its own behalf during charter party negotiations.

11. Phoenix and Adamastos Shipping created even further (purposeful) confusion due to the manner in which the charterparty recap was answered. Specifically, the recap was in an answer/question format and included the following statement:

"REGISTERED OWNERS PERFORMING – Pls advise head owners' managers" fullstyle and banking details.

Managers: Phoenix Shipping & Trading SA, 25 Akti Miaouli, Piraeus ...

PLS ADVISE FULL CP CHAIN OF THE VESSEL. PLS ADVISE THE CONTACT DETAILS WITH THEIR FULL ADDRESS OF HEAD OWNERS AS WELL AS EACH DISPONENT OWNERS INVOLVED. HEADOWNERS – NO DISPONENT – managers; Phoenix Shipping & Trading SA, 25 Akti Miaouli, Piraeus."

12. Given this background, PGS brought an application in the LMAA against Phoenix as an undisclosed principal (the "Application") given that the Owner was clearly using an agent for negotiations with the broker, who claimed to have no definitive knowledge of the identity of the principal, due to Phoenix's significant involvement and failure to state the contracting party's identity explicitly and failure to clearly identify itself as an agent for a disclosed principal.

13. Adamastos Shipping as the nominal Owners of the Vessel were the primary target of the arbitration commenced by PGS. However, given the confusion created during the

charterparty negotiations, PGS commenced a separate arbitration against Phoenix on the grounds that it was possibly the correct party to the charterparty as owners.

14. Phoenix sought to dismiss these proceedings against it by obtaining a declaration pursuant to Section 30 of the Arbitration Act 1996 that there was no valid arbitration agreement between Phoenix and PGS. The issue pending before the LMAA was one of construction of the arbitration agreement contained in the charterparty contract.

15. PGS brought a cross-application for stay of the proceedings against Phoenix, but the Tribunal denied the cross-application and allowed Phoenix's Application to dismiss to proceed on its merits. In response, PGS identified, *inter alia*, breaches by Phoenix in the performance of its role in the charterparty in order to defeat the Application to dismiss.

16. The Tribunal entered a Partial Final Award on the Application and declared "that Phoenix was not a party to the Charterparty and that PGS was not therefore entitled to bring arbitration proceedings against Phoenix in respect of any dispute arising under the Charterparty." The decision was not appealed by either side.

17. In order for the Tribunal to render its Partial Final Award, formal evidentiary hearings or oral arguments were not required, nor presented to the Tribunal. The Application was made on papers alone and the Tribunal relied only upon written submissions (often in the form of email correspondence from the parties' solicitors), along with documents such as the charterparty, recap, negotiations; plus witness statements from the brokers representing both parties who fixed the charterparty.

18. There was no formal disclosure and no witnesses were subject to depositions or examination.

19. The Tribunal did not consider any issues or facts in respect of corporate veil

piercing or alter-ego arguments. The Partial Final Award was reached purely on construction of the charterparty contract under applicable English law.

20. The Partial Final Award did not touch the issue present in this case, *i.e.* whether the corporate veil of Defendants should be pierced. In fact, the Partial Final Award answered a much more limited and narrow question under English law restricted to the scope of the agreement to arbitrate in the charterparty.

21. The Partial Final Award, whilst “final”, was not a substantive legal finding on any question pending before this Court: namely whether Vigorous Shipping, Blue Wall, Phoenix, and Adamastos Shipping are alter-egos such that the corporate veil may be pierced.

22. There were no allegations of domination and control and/or of manifest injustice or fraud. The LMAA Tribunal did not review and has not analyzed any of the factors that have been shown in this case, including but not limited to, the overlapping roles the Gourdomichalis brothers play as the founders, officers, and directors of Blue Wall and Phoenix and how they use those positions to dominate and control the nominal owners of the individual vessels.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE UNDER PENALTY OF PERJURY
THAT THE FOREGOING IS TRUE AND CORRECT

Signed and dated on December 17, 2018.



Edward Mills-Webb